IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 400 OF 2004

Menino Fernandes,
r/o Biptimol, Quepem,
Goa. ... Petitioner.

Versus

1. The Chief Officer,
   Curchorem-Cacora Municipal
   Council, Curchorem, Goa,

2. Gabriel Fernandes,
   House No.750,
   Bepquegal, Curchorem,]
   Goa. ... Respondents.

Mr. A. F. Diniz, advocate for the petitioner.

Mr. N. K. Sawaikar, advocate for respondent no.1.

Mr. M. S. Usgaokar, Senior Advocate with Mr. Gaurish Kudchadkar, advocate for the respondent no.2.

CORAM : R. M. LODHA, J.

DATE : 25th August, 2005.

P.C.

Heard Mr. A. F. Diniz, the learned counsel for the petitioner and Mr. M. S. Usgaokar, the learned Senior Counsel for respondent no.2.

2. There appears to be dispute as to who is the legal heir in whom the title had vested in respect of the house no.750. It is not in dispute that Mrs. Philomena Fernandes was the owner of the said house and was paying the house tax in respect thereof and for the purposes of demand collection her name was registered in the Municipal Council. The said Mrs. Philomena Fernandes died in the year 2002. The petitioner is her husband and according to him, after the death of his wife, the title of the said house has vested in him. On the other hand, the respondent n.2 claims to be the adopted son of the said Mrs. Philomena Fernandes and according to him the title of the said house, after the death of Mrs. Philomena Fernandes, has vested in him. In the proceedings under Section 125 (2) of the Goa Municipalities Act, 1986, the Chief Officer cannot decide as to whom the title of the deceased has vested. When there is a dispute about vesting of the title between the parties, it has got to be resolved through the civil court.

3. As there is serious dispute between the petitioner and the respondent no.2 about the title of the property, the direction by the Chief Officer in the Order dated 6th June, 2002, that the name of the deceased Mrs. Philomena Fernandes be continued in the

demand collection register does not call for any interference.

4. I am informed by the learned counsel for the petitioner that the petitioner after the death of his wife had paid the house tax in the month of May, 2003 and that the petitioner is desirous of paying the house tax of the said house until the dispute between the parties regarding title is resolved through civil court.

5. Mr. Usgaokar, the learned Senior Counsel appearing for the respondentno.2, submits that the respondent no.2 is, in fact in occupation of the said house and, therefore, he may be permitted to pay the house tax until the dispute regarding the title of the said house is decided by the civil court.

6. In my considered view, since the petitioner had already paid the house tax after the death of his wife, he may be permitted to pay the house tax of house no.750 to the concerned Municipal Council.

7. The Writ Petition is, accordingly, disposed of by the following Order:

The direction of the Chief Officer, Curchorem-Cacora Municipal Council, to maintain the name of Mrs. Philomena Fernandes in the demand collection register of the Council is

maintained.

The petitioner is permitted to pay the house tax for the house No.750 to the concerned Council as per the demand that may be made. However, it is clarified that such payment by the petitioner shall not be treated as evidence in support of his claim for title in house no.750.

R. M. LODHA, J.

mc.